

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
Dennis Peck Warren County	NO. 2012-AQ-12 NO. 2012-SW-12

TO: Dennis Peck
2170 G50 Highway
Saint Charles, IA 50240

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dennis Peck for the purpose of resolving violations pertaining to illegal open dumping and open burning. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bill Gross
Iowa Department of Natural Resources
Field Office No. 5
401 SW 7th Street, Suite 1
Des Moines, IA 50309-4611
Phone: 515-725-0268

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section

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455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On April 25, 2011, DNR Field Office 5 staff Dennis Appelhons and Tom Atkinson investigated a report of an improper burning occurring on property owned by Dennis Peck located at 2170 G50 Highway, between Saint Charles and Saint Mary's in Warren County. At the property, they observed a house that had been burned along with its contents and outbuildings. Additionally they observed several other areas where construction and demolition waste and tires had been burned.

2. Dennis Appelhons contacted Mr. Peck by telephone and informed him of the Iowa open burning regulations. As a result, Mr. Peck agreed to take the remaining waste to a sanitary landfill.

3. On September 2, 2011, DNR Field Office 5 staff Bill Gross observed dark smoke rising from Mr. Peck's property. Mr. Gross went to the property and met with Mr. Peck on-site. At the site a house was being built and construction waste was being burned in a small pile.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The open burning of solid waste by Dennis Peck demonstrates violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste by Dennis Peck demonstrates non-compliance with this provision.

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V. ORDER

THEREFORE, DNR orders and Dennis Peck agrees to the following:

1. Dennis Peck shall pay a penalty of \$500.00 within 30 days of the date this order is signed by the Director.
2. Dennis Peck shall immediately discontinue allowing, causing or permitting improper open burning of solid waste at the site described in this order and at any other location in the State of Iowa; and Dennis Peck shall comply in the future with all state and local requirements regarding the prohibition against illegal open burning.
3. All existing and future solid waste materials must be reused, recycled, or taken to a sanitary disposal project authorized by the DNR.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,000.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Dennis Peck has achieved an economic benefit by failing to comply with the laws regarding open dumping and open burning. Dennis Peck avoided having to pay the tipping fees at a landfill, especially for the solid waste that was illegally burned on-site. Based on the presence of burn areas on the property, it

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is evident that a significant amount of waste was disposed of by open burning. Therefore, a penalty of \$100.00 is assessed for this factor.

Gravity of the Violation – The open burning of construction and demolition waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. For these reasons, \$250.00 is assessed for gravity.

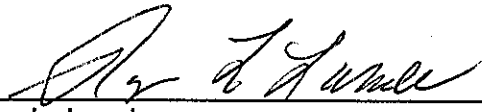
Culpability – Dennis Peck owns and controls the property on which the burning took place. He has intentionally allowed the open burning of prohibited wastes. Mr. Peck has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to the DNR's rules. For these reasons, \$150.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dennis Peck. For that reason, Mr. Peck waives his rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



Roger L. Lande
Iowa Department of Natural Resources

Dated this 26th day of
April, 2012.



Dennis Peck

Dated this 18th day of
April, 2012.

DNR Field Office 5; VII.C.2